

IN RE: BERUBARI UNION CASE (1960)

CITATION: AIR 1960 SC 845, 1960 3SCR 250

LAWS INVOLVED: Article 3, Art.368, Art.243, Art.253, and Art.248 of the Constitution of India

BENCH: B Sinha, AS Shah, K Dasgupta, KS Rao, M Hidayatullah, P Gajendragadkar, S Das

BRIEF FACTS:

1. It was During Independence at the time of Partition that a Boundary Commission was formed to partition the provinces of Bengal and Punjab.
2. Sir Cyril Radcliff was appointed as the chairman of this commission; he was assigned the task of demarcating the Boundaries of Bengal thus leading to Radcliff Award Dated August 12, 1947¹.
3. Consequence of the Award was that Berubari Union No. 12 fell within West Bengal thus forming a Part of Indian Union.
4. Pakistan for the first time in 1952 after assignment of the boundaries raised the issue that Berubari should form the part

¹ <https://indiankanoon.org>

of East Pakistan due to the Majority of Muslim Population and thus was wrongfully included in India² .

4. So, In order to Release the Tension between India and Pakistan the Prime Ministers of these Respective countries decided to form an agreement to settle the dispute and issues.

5. It resulted into formation of Indo-Pakistan Agreement on September 10, 1958, popularly known as the Nehru-Noon Agreement, which was a purely Executive Action taken by Pt. Nehru.

6. The outcome of the Agreement was the division of Berubari Union half and half between India and Pakistan. Thus North Region was given to India and south to Pakistan.

7. When this Decision went for Ratification by Legislature, President of India at that time ,Dr.Rajendra Prasad referred the matter to Supreme Court under Art.143(1) of the constitution³ for the supreme court to Intervene .

ISSUES BEFORE THE COURT:

1. Whether any Legislative Action is required for implementing the Nehru-Noon Agreement?

2. Whether law under Art.3 of the Constitution enough to cede away any part of Indian Union through pure executive Action?

² The Story of Berubari Union, <https://www.gktoday.in>

³ INDIA CONST, art.143, cl.1 .

3. Whether any Amendment under Art. 368 is required to implement Nehru-Noon Agreement?

CONTENTIONS RAISED BY THE PETITIONER

1. Attorney General on behalf of Union of India contended that no legislative Action was required to enforce the Agreement as it was the exercise of pure executive power with respect to already pending dispute on different interpretation of the Radcliff Award.

2. It was the settlement of boundary in the light of Award to which both Governments were bound, thus it was in no sense alienation or cessation of the territory of India merely a mode of settling the boundary.

3. The learned Attorney General Further contended that the settlement and recognition of Boundaries can be done by executive Action alone. Petitioner in support of this relied upon following provisions in constitution: Entry 14 List 1 of the seventh schedule, Art.253⁴(Relations between Union and state), Art.245(1)⁵ empowers parliament to make laws for the whole or any part of territory of India, Art.245(2)⁶, Art. 246 (subject matter on which parliament can make laws, Art.248 residuary powers of Parliament, thus settling all doubts.

⁴ INDIA CONST , art.253.

⁵ INDIA CONST, art. 245. Cl 1.

⁶ INDIA CONST, art. 245, cl 2.

RESPONDENTS CONTENTION:

1. Respondents contended that the Parliament has no power to give away or cede any part of the Indian territory to a foreign state either through passing a ordinary law or even through amendment because our preamble clearly embodies the principles of DEMOCRACY, SOVEREIGNTY AND REPUBLIC form of Government, so the parliament can in no way hinder the republican and sovereignty form of govt.
2. The respondent contended that under Art.1 (3)(c) the country has the power to acquire other territory but no such provision exists for ceding away any part of Indian Territory.

DECISION:

1. With Respect to first issue before the court the Supreme Court held that yes legislative action was necessary for implementing the Agreement
2. Parliament may by law choose to amend Art.3 of the constitution, so that it can cover the matters related to cession of Indian Territory in favour of foreign states. A Law of Parliament relatable to both Art.368 of the constitution and Art.3 would be necessary only if Parliament chooses first to pass a law amending Art.3.
3. Supreme Court held that No, preamble is not a part of Constitution.
4. Parliament can choose to pass the law under Art.368 that would be sufficient to implement the agreement.

5. A Law passed by the parliament under Art. 3 of the constitution itself is not enough and would be incompetent.

6. Supreme court said that it is difficult to accept the argument that the agreement was made to determine and attempt to interpret the award, while on the contrary it was made to settle the dispute amicably on an Adhoc Basis.⁷

CONCLUSION:

1. All these events led to amendment of the constitution resulting into passing of The Constitution 9th Amendment Bill which allowed to give effect to the agreement.

2. We can conclude by saying that Parliament in India is not powerful enough to cede a territory to a Foreign state except after amending the Constitution.

3. Later on Supreme Court in 1969 ruled that, settlement of Boundary dispute between India and any other country can be done by executive Action alone excluding the cessation of a territory.

4. This Case in turn helped to keep a check on the arbitrary exercise of the executive Action which needs to be ratified by the parliament.

5. The Decision of the court saying that Preamble is not a part of the constitution is a very narrow interpretation as it forms the blueprint of our constitution, this ruling was overruled in Keshavnanda Bharti Case.

⁷ <https://indiankanoon.org>

